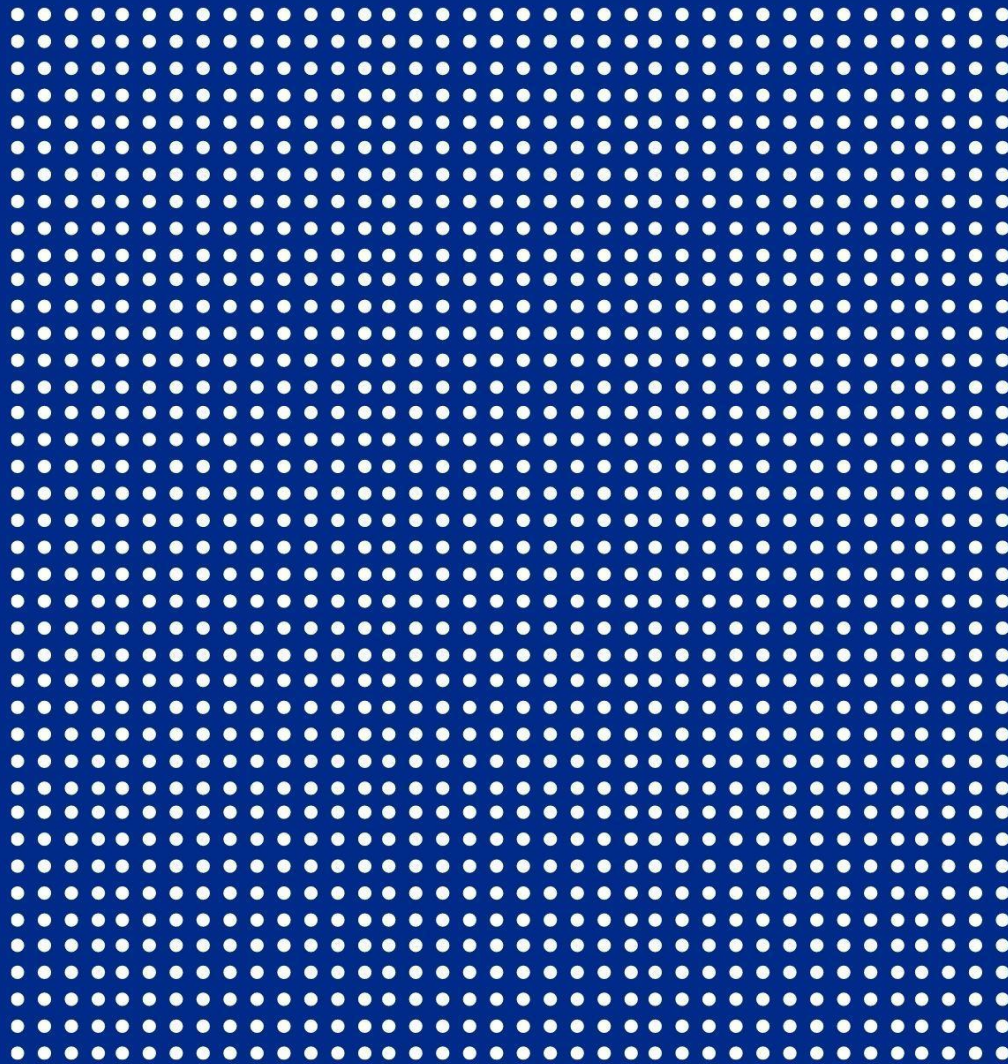


EXHIBIT H

EQUALITY LABS



CASTE EQUITY LEGAL REVIEW

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2021

Caste discrimination has become a significant issue in the United States. There have been numerous cases involving discrimination based upon Caste which have demonstrated the extent of the problem and the urgent need for a solution. Caste based discrimination and harassment is a civil rights and social justice issue, and often occurs within the same national origin or race, in groups of South Asian descent and Caste members of the diaspora. The South Asian Caste system has been described as “a hierarchical system that involves discrimination and perpetuates oppression”,¹ which is precisely what the United States civil rights laws are intended to remedy.

Caste impacts the over 5.6 million South Asians in the United States². South Asian Americans are Americans whose heritage comes from any of the countries of South Asia including: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, and Myanmar. It also includes people who were indentured from these communities including Indo-Caribbean and Indo-Fijian communities. They are one of the fastest growing immigrant groups in the United States, and Caste-oppressed communities are essentially minorities within this minority group.

Caste travels wherever South Asians go. As South Asian immigrants have been in this country for almost two centuries so too has caste developed as this community has grown. Today Dominant Caste people of the South Asian diaspora have created social and professional networks and institutions that exclude caste oppressed Americans across multiple institutions. These spaces include educational institutions, places of worship, community organizations, and workplaces across the country. Caste impacts diverse issues as immigration, labor, housing, domestic violence, education, personal relationships, and national politics. American institutions that serve or contain large numbers of South Asian Americans will be institutions that are vulnerable to Caste inequity. Caste oppressed Americans have reported a wide range of discriminatory actions - from social exclusion, housing discrimination, differential treatment in the workplace, to verbal and even physical assault.

Universities are one of the largest sites facing casteism in the United States today. Faculty, students, and staff have reported a wide range of discrimination - from social exclusion, housing discrimination, to verbal and even physical assault. Prominent institutions like Harvard University, Stanford, University of California Davis, University of Chicago, and University of Pennsylvania are only a sampling of the prestigious universities grappling with these issues.

In response to the crisis of Caste discrimination, many universities across the United States have begun the process of adding Caste as a protected category to ensure equity on their campuses. University of California Davis, Brandeis University, Colby University, California State East Bay Department of Social Work, and Carleton University (CA) have all been successful in adding

¹ Harvard Law Review Forum, Vol 134:456, page 459, Title VII and Caste Discrimination, Guha Krishnamurthi and Charanya Krishnaswami

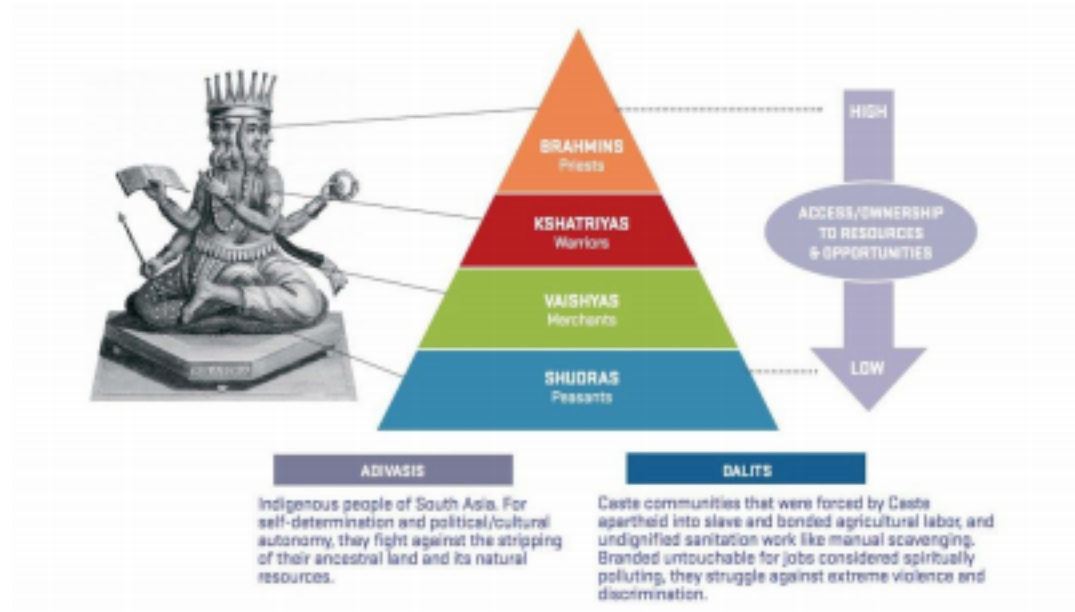
²(<https://data.census.gov/Cedsci/table?q=B02018&tid=ACSDT1Y2019.Bo2018&hidePreview=true>), US Bureau of Census, American Community Survey, Asian Alone or in any Combination by Selected Groups, 2018

language around Caste to relevant mission statements and anti-discrimination policies. **As of Fall 2021, the following institutions within the California State University (CSU) have passed resolutions supporting the addition of caste as a protected category:**

- **California State Student Association (CSSA)** representing the voices of CSU students
- **California Faculty Association (CFA)** representing the voices of CSU faculty and employees.
- **CSU East Bay's Academic Senate** representing the voices of CSU East Bay faculty.
- **Cal Poly SLO's Academic Senate** representing the voices of Cal Poly SLO's faculty.
- **Cal Poly, SLO's ASI Board of Directors** representing the voices of Cal Poly SLO students.
- **Cal Poly Pomona's ASI Board of Directors** representing the voices of Cal Poly Pomona students.

As Universities around the United States have started to move to protect its Caste-oppressed stakeholders, below is a legal review to help answer any questions related to the adoption of Caste as a protected category on your campus.

What is Caste?



Caste is a structure of oppression that affects more than 260 million people worldwide. This exclusionary system ranks people at birth, with one's Caste determining every aspect of their life — their job, whom they marry, and where they worship. Brahmins, who created this system in Hindu scripture, are at the top of the caste system and have benefited from centuries of privilege, access, and power because of it. Dalits, who sit at the bottom of this hierarchy, are branded “untouchable” and sentenced to a violent system of caste apartheid with separate neighborhoods, places of worship, and schools. While caste-based discrimination in the United States is not as widespread and overt as it is in India, it exists here too.

In Equality Labs's 2016 on Caste discrimination in the United States we documented the first data to document caste in American institutions.

Key Conclusions for Caste-based Discrimination in the United States

It is clear from the findings of this report that Caste definitively exists in the diaspora. A summary of the data shows the scope of the problem. Caste in its manifestations has structural, interpersonal, and internal consequences that we must address.



25% of Dalits who responded said they had faced **verbal or physical assault** based on their Caste.



ONE IN THREE Dalit students report being **discriminated against during their education.**



TWO OUT OF THREE Dalits surveyed reported being **treated unfairly at their workplace.**



60% of Dalits report experiencing **Caste-based derogatory jokes or comments.**



40% of Dalits and **14%** of Shudra respondents were made to feel **unwelcome at their place of worship** because of their Caste.



20% of Dalit respondents report feeling **discriminated at a place of business** because of their Caste.



OVER 40% of Dalit Respondents have reported being **rejected in a Romantic Partnership** on the basis of Caste.



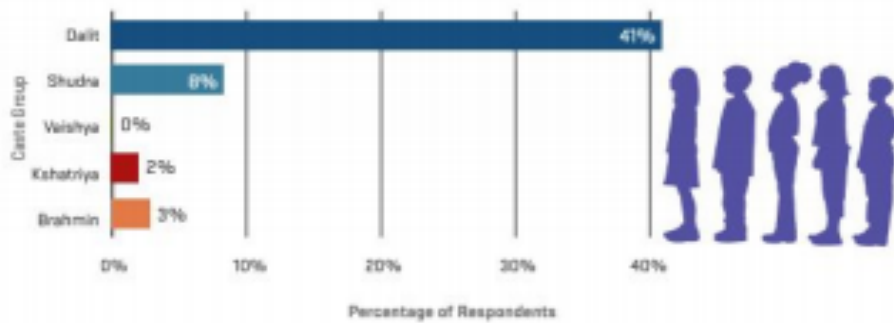
ONE IN TWO of all Dalit respondents and **ONE IN FOUR** of all Shudra respondents **live in fear of their Caste being “outed.”**

To learn more about the breakdown of Caste read our Caste report [here](https://www.equalitylabs.org/castesurvey)³.

³ <https://www.equalitylabs.org/castesurvey>

Caste Discrimination in American Universities

Figure 9: Caste Discrimination in Schools



Many respondents to the Caste in the United States survey reported discrimination by their fellow South Asian students. This can include discrimination in **housing, educational spaces, and social and professional networks**. Upon learning that their housemate belongs to a “lower” Caste, dominant Caste students may ask oppressed Caste students to move to other living quarters, forbid the cooking of non-vegetarian food, or use demeaning and casteist slurs. In educational spaces, students may demean oppressed Caste students’ merit. And in some cases, dominant Caste students may enact sexual or romantic violence, or socially exclude Caste-oppressed students from South Asian student groups and professional networking circles.

41% of Dalit students surveyed reported facing discrimination in educational institutions in the diaspora. In contrast, only up to 3% of Dominant Caste respondents reported the same.

In addition to this data our survey uncovered some of the first stories of caste discrimination. Below is a short summary of some of the anecdotes.



“I am an Adivasi student. In my undergrad in Iowa, there were many incidents where other Indian kids from rich, upper Caste and urban backgrounds, would make Casteist jokes on me. One in particular was that a few of them were planning to go to visit the local Zoo. One of them said, I don’t need to go to the Zoo to see animals, we get to see K. (myself) everyday!” - K.A.

"In the United States, when my child was in second grade, she used to have play-dates with an upper Caste Hindu kid. Once the kid's mother had come over to our house and during the course of the conversation, came to know that we follow Buddhism, which is understood to be the religion of Dalits. This was the last time that family interacted with us. Word that my family was Dalit spread like wildfire, my child became secluded from other Caste Hindu children. It angered me and it broke my heart that my child had to face the feeling of being an outcaste in the 21st century in the United States!" - T.R.



"I had to report to HR when other South Asians in the company used Caste slurs on company forums. Would they use the N-word for African Americans, then why a Caste slur for me? I was happy I had power as a VP in my company, but what of the many who do not, what of them?" - K.V.



"It becomes difficult to disclose your Caste as a Dalit and still manage to keep friends or business networks." - A.K.

"I'm afraid to put in my resume that I have experience working in the field of Dalit and Adivasi rights because I think recruiters may deny me employment" - M.B.



LEGAL ASPECTS OF CASTE DISCRIMINATION

The addition of caste as a protected category has its foundation in legal precedent, interpretations, and law in international, federal and local human and civil rights statutes and policies. Below is a summary of the history.

International Law

The commitment to ensure the rights of caste oppressed americans begins first and foremost with the UN International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified by the United States in 1994. which prohibits racial discrimination based on descent, which includes Caste and analogous systems of inherited ethnic status.

Additionally the United Nation's Subcommission on the Promotion and Protection of Human Rights, in it's August 2000 resolution, urged governments to ensure that appropriate legal penalties and sanctions, including criminal sanctions, are prescribed for and applied to all persons or entities within the jurisdiction of Government concerned who may be found to have engaged in discrimination on the basis of work and descent.⁴ The Subcommission's working paper on work and descent-based discrimination noted a year later: "The laws are there, but there is a clear lack of will on the part of law enforcement officers to take action owing to caste prejudice on their part of deference shown to higher-caste perpetrators."⁵

As the United States is signatory to these international covenants it is obligatory that institutions where there is Caste discrimination must be proactive in addressing the issues of caste discrimination through policy, training, and other diversity measures.

Federal and Congressional Laws

In the United States Congress, in 2007, the 110th Congress issued a House Resolution (H.Con.Res.139) that Caste based discrimination is unacceptable. In 2015, House Resolution (H.Res. 158) was introduced by Eleanor Holmes Norton "condemning caste discrimination".

Title VII of the Civil Rights Act of 1964, Public Law 88-352 Section 704, 78 Statutes 257, as amended, 42 U.S.C. Section 2000e, et seq, provides:

"[a] plaintiff may establish a prima facie case of discrimination either by presenting direct evidence of intentional discrimination by the defendant or by showing the existence of circumstantial evidence which creates an inference of discrimination."

A complainant also needs to show that he or she is 1) a member of a protected class
2) subject to adverse employment action.

Title VII makes it unlawful...for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

⁴ (E/CN.4/SUB.2/RES/2000/4. August 2000)

⁵ Goonesekere, "Prevention of Discrimination", at page 26.

The protected classes under US Civil Rights law are race, national origin, (including ancestry and ethnicity), gender, religion, disability, age, and sexual orientation. These are broad, facially neutral universal classes, and address well documented bases of discrimination broadly. National origin, ancestry, and ethnicity have been interpreted as protecting against discrimination on the basis of actual or perceived birthplace, ancestry or descent, culture or language.

In analyzing race and national origin claims, the courts have recognized that these claims substantially overlap. In *Sinai v. New England Tel and Tel Company*, 3 F3d 471, 475 (1st Cir. 1993) the court held “Race and national origin discrimination may present identical factual issues when a victim is born in a nation whose primary stock is one’s own ethnic group” and thus, in certain circumstances...national origin and race discrimination may overlap). (Quoting *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 614 (1987), acknowledging that race may sometimes be correlated with national origin because of certain historical or demographic facts.”). The Supreme Court held that discrimination based on “Arabian ancestry” is racial discrimination under 42 U.S.C. § 1981 (unlawful discrimination)”. The Court held that the statute was intended by Congress to protect people from discrimination “because of their ancestry or ethnic characteristics”, consequently ancestry and ethnicity are sufficient to give rise to protected class.

Another case which provides a similar analysis is *Fraser v. New York City Bd.of Educ*, No. 96-CIV0625, 1998 (S.D.N.Y. Feb 10, 1998) assuming, without deciding, that claims of national origin, religion, and color discrimination were reasonably related to claim of race discrimination where the EEOC charge indicated that the plaintiff was a “Hebrew Israelite”. The *St. Francis* case held that the law covers ethnic ancestry and protects members of “white” ethnic groups such as Arabs, Italians, Russians, Jews, Greeks, and Slavs, among others, from discrimination, and protects against discrimination by one ethnic or ancestral group against another.

The question in determining coverage under Title VII is whether Caste is included in one of the categories. *The case of Bostock v. Clayton County*, 590 US __ (2020), 140 S. Ct. 1731, 207 L.Ed 2d 218, which was decided before the addition of sexual orientation as a protected class, indicates that Caste should also be considered a protected class even though it is not specifically contained in the law. In *Bostock* the Court noted that when the prohibition of employment discrimination “because of sex” was enacted with the Act in 1964, it was not explicitly intended to apply to discrimination against homosexual or transgender persons. Yet the Supreme Court decided that the language of the statute unambiguously prohibits the discriminatory practice of firing an employee for being gay or transgender. The Court decided that it is a violation of Title VII when an employer intentionally fires an individual based, at least in part, on sex, as discrimination on the basis of homosexuality or transgender status requires intentionally treating employees differently because of their sex. The *Bostock* case also based its decision on the “but for” standard - whether the outcome would not have happened “but for” the purported cause.

As a result of these interpretations, allegations of Caste discrimination should be covered by the protected classes or categories enumerated in Title VII, given that those individuals of the Dalit Caste who are discriminated against in employment are certainly being affected due to their ancestry, national origin, and race.

Furthermore, the mission of the EEOC is to further a compelling government interest in addressing and preventing all forms of harassment and discrimination in the workplace, and to ensure the opportunities, inclusions and dignity for all throughout the country's workplaces.

The EEOC enforces the law and differential treatment of workers due to national origin and sexual harassment - so the scope of their enforcement includes employment discrimination, exploitation and human trafficking.

STATE LAW

Even in the absence of statutes recognizing protected classes, state courts have interpreted anti-discrimination laws as providing broad protections. For example, in the District of Columbia, political affiliation is a protected class, and in DC, Connecticut and New York, familial status is a protected class.

The California Department of Fair Employment and Housing has been actively involved in issues relating to Caste discrimination. In June 2020, the DFEH announced a suit against Cisco Systems and former managers for Caste-Based Discrimination, in Federal Court, (now in Santa Clara Superior Court) involving discrimination based on national origin, religion, race and color. The lawsuit alleges that "managers at Cisco's San Jose headquarters campus, which employs a predominantly South Asian workforce, harassed, discriminated, and retaliated against an engineer because he is Dalit Indian, a population once known as the "untouchables" under India's centuries-old caste system." The lawsuit also alleged that the engineer received "less pay, fewer opportunities, and other inferior terms and conditions of employment because of his religion, ancestry, national origin/ethnicity, and race/color." The DFEH is authorized to file lawsuits for violations of certain federal civil rights laws, including Title VII, as well as California's civil rights laws. California civil rights laws include discrimination in employment, housing and public accommodations and from hate, violence and human trafficking. California law clearly outlaws ancestry based discrimination and race and color discrimination.

Recommendations

Ultimately, the most effective way to assure that caste discrimination is addressed, would be for legislation, policies, or a guidance, in an university, to contain explicit language that caste is a prohibited basis of discrimination and that Caste is thus a protected class. The addition of such a category further extends existing rights but it is important to also be explicit to a vulnerable community that is experiencing harm and for whom protections are vital for their full participation in society that they will have recourse.

For these reasons, we recommend that public agencies implement the following recommendations:

- **ADD** Caste as a protected category across university diversity and inclusion policies.
- **INCLUDE** Caste as an identity category in campus climate surveys in order to collect data

on the challenges faced by Caste-oppressed students on campus.

- **IMPROVE** cultural competencies with regards to Caste among staff, faculty, and administration. We recommend that required Diversity & Inclusion workshops include trainings that address Caste discrimination in American institutions, and how to prevent it.
- **SENSITIZE** institutional disciplinary committees and International student services to Caste. This includes learning about the origins of Caste, engaging critically with South Asian history, and keeping up with the rise of hate crimes and attacks on religious and cultural minorities.
- **SUPPORT** Caste-oppressed students by prioritizing the visibility of Caste-oppressed communities in academic and co-curricular programs.
- **ENSURE** the success of Caste-oppressed students in your institution by creating an environment where they can reach their full potential without fear of casteism.

Additional Resources

- NBC News: [Harvard adds caste bias protections for graduate student workers](#)
- Washington Post: [India's engineers have thrived in Silicon Valley. So has its caste system.](#)
- NY Times: [Sect Accused of Using Forced Labor at More Temples Across U.S.](#)
- CNN: [Even in the US, South Asians say caste has proved hard to escape](#)
- Washington Post: [A new lawsuit shines a light on caste discrimination in the U.S. and around the world](#)
- NY Times: [Why Is Caste Inequality Still Legal in America?](#)
- NPR: [How To Be An Anti-Casteist](#)
- US Today: [Why are American colleges addressing caste discrimination? An 'opportunity to educate](#)
- Yes Magazine: [It's Time to Dismantle Caste in the U.S.](#)
- SF Chronicle: [Caste bigotry is real. And it's rampant in the Bay Area](#)
- LA Times: [Even in the U.S. he couldn't escape the label 'untouchable'](#)
- SF Chronicle: [UC Davis quietly added caste to its antidiscrimination policy. Will it cause others to do the same?](#)
- BBC: [Caste bias in Silicon Valley: India's unwanted export](#)
- The World: [Caste discrimination exists on college campuses. Some schools are trying to change that.](#)

- Harvard Law Review: [Title VII and Caste Discrimination](#)
- :[Caste in the USA Podcast](#)
- India Abroad: [Caste on campus: Looking at social exclusions of Dalits in the U.S. colleges](#)
- Brandeis University: [Statement on the Interpretation of Caste Within the Brandeis Nondiscrimination Policy](#)
- Georgetown Journal of International Law: [The Case for Caste as a Protected Class](#)
- Times Higher Education: [Caste Discrimination Is A Global Problem](#)
- Al Jazeera: [It is time to talk about caste in Pakistan and Pakistani diaspora](#)